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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~1288~~. 856

ARTHUR O'MALLEY, APPELLANT,

vs.

J. P. FARLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED MARCH 11, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition in Equity.*

In the — Court of Dubuque County, Iowa. September Term, A. D. 1884.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

The plaintiff, agent of the Citizens' Law and Order League of Dubuque, complaining, shows to the court and avers as follows:

Par. 1st. That he is a citizen of Dubuque county, State of Iowa.

Par. 2d. That defendant, Arthur O'Malley, at the city and county of Dubuque, Iowa, at number 755 on Main street, in the city of Dubuque, Iowa, has established a saloon and place for the keeping and sale of intoxicating liquors, to wit, whiskey, wine, gin, and beer, in violation of law, and is now keeping, and employed and engaged in keeping, said intoxicating liquors in said saloon and place with the intent to sell the same, and with the intent to permit the same to be sold therein, to be drunk as a beverage, contrary to the provisions of section 1542 of the Code of Iowa as amended and substituted by an act of the General Assembly of the State of Iowa, approved April 3rd, 1884.

Par. 3rd. That in the month of August, 1884, the said defendant, in the saloon and place aforesaid, did, by himself, his clerk, agent, and servant, sell to divers and sundry persons intoxicating liquors, to wit, whiskey, wine, gin, and beer, to be drunk as a beverage, contrary to the provisions of section 1540 of the Code of Iowa as amended and substituted by an act of the General Assembly of the State of Iowa, approved April 3rd, 1884.

Par. 4th. That said defendant, at the saloon and place aforesaid, has heretofore, to wit, since the 15th day of July, 1884, by himself, his clerk, agent, and servant, sold, and continues from day to day to sell, intoxicating liquors, to wit, whiskey, wine, gin, and beer, to be drunk as a beverage, contrary to law.

Par. 5th. That said defendant is the lessee of the premises aforesaid, and is the owner of certain whiskey, gin, wine, and beer kept and contained in certain kegs, bottles, and other vessels for illegal sale upon said premises as aforesaid, and is the owner of certain furniture and fixtures on the said premises used in said business.

Par. 6th. Whereby and by reason of the premises and in manner and form as aforesaid the said defendant, Arthur O'Malley, at the saloon and place aforesaid, has established and is now keeping and maintaining a nuisance, to the great injury of the plaintiff and other good citizens of said county, and to the detriment of the public peace and safety, and unless restrained by the order and decree of this court will continue to keep and maintain said nuisance at said place in violation of law and to the public injury. Wherefore plaintiff prays that said saloon and place be adjudged and decreed to be a nuisance, and that the same be abated, and said defendant be enjoined by preliminary injunction from further keeping or maintaining said saloon and place for the illegal sale of intoxicating liquors, and also from keeping the said liquors with intent to sell the same contrary to law, and also from selling the same in said place

contrary to law either by himself or his clerk, agent, or servant, and that upon final hearing said injunction be made perpetual, and that plaintiff have such other and further relief as in equity he is entitled to, and also that he have judgment for costs.

S. P. ADAMS & JED. LAKE,
Att'ys for Pl'ff.

STATE OF IOWA, } ss:
Dubuque County, }

I, J. P. Farley, being first duly sworn, depose and say that I am plaintiff in the foregoing petition; that I have heard the same read and know the contents thereof, and that the several averments therein contained are true, as I verily believe.

J. P. FARLEY.

Subscribed and sworn to by the above-named J. P. Farley this 4th day of September, 1884, before me.

[SEAL.] S. P. ADAMS,
Notary Public, Dubuque County, Iowa.

Endorsed: Filed Sep. 4, 1884. J. J. Dunn, clerk.

2 *Original Notice.*

To Arthur O'Malley:

You are hereby notified that on the fourth day of September, A. D. 1884, there will be on file in the clerk's office of the — court of the State of Iowa, in and for Dubuque county, the petition in equity of J. P. Farley, agent of the Law and Order League of Dubuque, charging that at your place of business, at number 755 on Main street, in the city of Dubuque, Iowa, you have established and are maintaining a saloon and place for keeping of intoxicating liquors with intent to sell the same contrary to law, and that in the month of August, 1884, at said saloon and place, you did, by yourself, your clerk, agent, and servant, sell to sundry persons intoxicating liquors in violation of law, and asking that said saloon and place be adjudged and decreed to be a nuisance and that the same be abated, and that you be restrained, by a writ of injunction, from further selling or keeping for sale intoxicating liquors at said place in violation of law, and that unless you appear thereto and defend before noon of the second day of the next term of said court—that is to say, before noon of the 16th day of September, A. D. 1884—default will be entered against you and judgment and decree rendered thereon, according to the prayer of said petition.

S. P. ADAMS & JED. LAKE,
Attorneys for Plaintiff.

3 STATE OF IOWA, } ss:
Dubuque Co., }

I do hereby certify and return that I received the within notice on the 4th day of September, A. D. 1884; that on the same day I personally served the same on the within-named defendant, Arthur

O'Malley, by reading the same to him and giving him a true copy thereof, in Julien township, Dubuque county, Iowa.

JAMES McCANN, *Sheriff*,
By D. A. GEHRIG, *Deputy*.

Sh'ff's fees, 80 cts.

4 *Petition for Removal to United States Circuit Court.*

STATE OF IOWA, *Dubuque County:*

In District Court. September Term, A. D. 1885.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

To the said district court:

1st. Your petitioner, the above-named defendant, shows to the court that he is, and for five years last past has been, a citizen of the State of Iowa.

2d. That long prior to and ever since the fourth day of July, A. D. 1884, he was continuously engaged upon the premises mentioned in plaintiff's petition, in the business of keeping a saloon, under and in accordance with the laws of Iowa.

3d. That in the commencement and prosecution of said business he had and has involved property of great value, which will be rendered entirely worthless if the plaintiff succeeds against him in the present action, and being over 20 dollars in value.

4th. That there has been no trial or final hearing of this cause.

5th. That the twentieth General Assembly of the State of Iowa passed an enactment which petitioner prays may be considered in this case, which by its terms went into effect on the 4th day of July, A. D. 1884, being chapters 8 & 143, laws of the 20th General Assembly of the State of Iowa, amending and repealing sections of title XI, chap. 6, Code of Iowa, relating to the sale of intoxicating liquors, which renders highly penal the prosecution of said saloon business, and which, if enforced, as threatened, as hereinafter stated, will destroy the property of defendant so used and deprive him unlawfully of said occupation.

6th. That under the provisions of said law defendant can be deprived of his property and punished with heavy penalties for being engaged in said saloon business without having the opportunity and right of a jury trial upon the questions involved, and without any trial whatever, except as pointed out by said act.

7th. That the supreme court of the State of Iowa, at March term, 1885, in case of Littleton *vs.* Fritz, has declared said law in full force, and the persons in the situation of defendant can be prosecuted under it and be deprived of property and liberty without any right to a jury trial.

8th. That under said enactment and said decision the said plaintiff has begun and is prosecuting this suit.

9th. That by said proceedings under said enactment and said decision said defendant is deprived of the rights guaranteed him under the acts of Congress usually known as the "Civil Rights"

law, and under the Constitution of the United States and amendments thereto especially is he denied, and he cannot enforce in the State judicial tribunals of Iowa, the rights secured to him under said "Civil Rights" law and said Constitution of the United States, and especially the 14th Amendment thereto, and said enactment of said 20th General Assembly and said decision are in violation of said "Civil Rights" law.

Therefore defendant offers, as provided by law, to file copies of all pleadings and proceedings herein in the circuit court of the United States for the northern district of Iowa on the first day of its next term, and prays that this suit may be removed into said court, as provided by section 641 of the Revised Statutes of the United States.

FOUKE & LYON,
McCENEY & O'DONNELL,
Attorneys for Petitioner.

STATE OF IOWA, } ss:
Dubuque County, }

A. O'Malley, being duly sworn, says he is defendant in this action; that he has heard the foregoing petition read and knows its contents, and that the matters and things therein stated are true, as he verily believes.

A. O'MALLEY.

Signed and sworn to before me this 26 day of August, A. D. 1885, by A. O'Malley the affiant.

Witness my hand and notarial seal.

[SEAL.]

C. E. LYON,
Notary Public.

Endorsed: Filed Aug. 29, 1885. J. J. Dunn, clerk.

5 In the District Court, Dubuque County, Iowa. At Chambers.

J. P. FARLEY
vs.
ARTHUR O'MALLEY. } 6771.

Upon reading the petition and application for temporary writ of injunction in said cause it is ordered that said application be heard on Tuesday, the 1st day of September, A. D. 1885, at 10 o'clock a. m., at the court-house in the city and county of Dubuque, Iowa, or as soon thereafter as counsel can be heard, and that at such time and place defendant show cause why such temporary writ of injunction should not issue as prayed, ten days' notice of time and place of hearing to be served on defendant, together with copy of affidavits and of said petition, unless copy of said petition has been filed in court.

C. F. COUCH,
Judge District Court, 9th Judicial District of Iowa.

Endorsed: Filed August 19, 1885. J. J. Dunn, clerk.

6 STATE OF IOWA, } ss:
Dubuque County, }

In the District Court.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

To the above-named defendant:

You are hereby notified that in the above-named action now pending in said court, in which plaintiff, in his petition, prays that you be enjoined from further keeping or maintaining a saloon and place for the illegal sale of intoxicating liquors, and also from selling or keeping with intent to sell intoxicating liquors contrary to law, either by yourself, your clerk, agent, or servant, at your place of business, the application for an order for a preliminary injunction prayed for in said petition will come on for hearing before the Hon. Carl F. Couch, judge of said court, at the court-house in Dubuque, on the 1st day of September, 1885, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, when and where you may appear and show cause against said application if you think proper, said application being based upon said petition and affidavits, copies of which are hereto annexed.

S. P. ADAMS & JED. LAKE,
Attorneys for Plaintiff.

7 STATE OF IOWA, } ss:
Dubuque County, }

I hereby certify and return that I received the within notice on the 19th day of August, A. D. 1885; that on the 21st day of August, A. D. 1885, I personally served the same on the within-named Arthur O'Malley by reading the same to him and giving to him a true copy thereof in Julien township, Dubuque county, Iowa.

JAMES McCANN,
Sheriff, Dubuque Co.,
By D. A. GEHRIG, *Deputy.*

Affidavit.

STATE OF IOWA, } ss:
Dubuque County, }

In District Court, Dubuque County, Iowa.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

I, C. E. Bradley, of lawful age, being first duly sworn, depose and say that I know the saloon kept by defendant, Arthur O'Malley, at number 755 Main street, Dubuque, Iowa; that I was in said saloon on the 21st day of August, 1884, and his bartender then and there sold me a glass of wine, and he also — a glass of wine to another person, each from the same bottle; there was at the time a
8 fine display of bottles behind the bar marked with the names of various kinds of intoxicating liquors; and I further say that on or about the 11th day of April, 1885, I was in said saloon

again and saw several persons in there, and I then bought of the bartender a glass of wine, and at the same time and place I saw said bartender sell a glass of wine from the same bottle that mine was poured from to another person.

C. E. BRADLEY.

Subscribed and sworn to by the above-named C. E. Bradley this 18th day of April, 1885, before me.

[SEAL.] S. P. ADAMS,
Notary Public, Dubuque Co. Iowa.

STATE OF IOWA, *Dubuque County,* } ss:

In District Court, Dubuque County, Iowa.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

I, Louis La France, being first duly sworn, depose and say that I know the saloon kept by defendant, Arthur O'Malley, at number 755 Main street, Dubuque, Iowa; that on or about the 21st day of August, 1884, I was in said saloon, and the bartender sold me a glass of wine, and at the same time I saw said bartender sell to
9 another person a glass of wine, which he poured from the same bottle as the one sold me, which I drank.

LOUIS LA FRANCE.

Subscribed and sworn to by the above-named Louis La France this 18th day of April, 1885, before me.

[SEAL.] S. P. ADAMS,
Notary Public, Dubuque Co., Iowa.

STATE OF IOWA, *Dubuque County:*

In District Court, Dubuque County, Iowa.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

I, Charles F. Geasland, of lawful age, being first duly sworn depose and say that on or about the 5th day of April, 1885, I was in the saloon of defendant, Arthur O'Malley, at number 755 Main street, Dubuque, and at the same time and place the bartender in said saloon sold me a glass of whisky.

CHAS. F. GEASLAND.

Subscribed and sworn to by the above-named Chas. F. Geasland this 22nd day of April, 1885.

[SEAL.] S. P. ADAMS,
Notary Public, Dubuque Co., Iowa.

10 STATE OF IOWA, *Dubuque County,* } ss:

In District Court, Dubuque County, Iowa.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

I, C. H. Widman, of lawful age, being first duly sworn, depose

and say that I know the saloon kept by Arthur O'Malley at number 755 Main street, Dubuque; that I was in said saloon on or about the 11th day of April, 1885, at which time and place his bartender sold me a glass of wine; said Arthur O'Malley was present, and at the same time and place his said bartender sold a glass of wine to another person, which wine was poured from the same bottle as mine was, which he sold me.

C. H. WIDMAN,

Subscribed and sworn to by the above-named C. H. Widman this 22nd day of April, 1885, before me.

[SEAL.]

S. P. ADAMS,
Notary Public, Dub. Co., Iowa.

Demurrer.

STATE OF IOWA, }
Dubuque County, } *ss:*

In District Court. September Term, 1884.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

11 And now comes the defendant and demurs to the petition of plaintiff herein, and for cause of demurrer states—

I.

The petition shows that plaintiff has no legal capacity to sue.

II.

The petition shows no such interest in the plaintiff, in the event of the suit, as will enable him to maintain his action.

III.

The petition nowhere alleges that said defendant has been, by a proper tribunal, convicted of the alleged nuisance sought to be enjoined.

IV.

The petition shows that this court has no jurisdiction of the cause of action set out in the petition.

V.

The court has no jurisdiction of this action, because it is an attempt, in a court of chancery, to pass upon the guilt or innocence of the defendant under a penal and criminal statute, and it is by said action sought to deprive him of a jury trial upon the issue raised.

VI.

12 The section of the statute under which this action is brought is unconstitutional, null, and void, because it is an attempt to deprive the party accused of the offense herein of a jury trial.

VII.

The facts stated in the petition do not entitle the plaintiff to the relief demanded.

FOUKE & LYON,
E. McCENEY,
For Defendant.

Endorsed: J. P. Farley *vs.* Arthur O'Malley. Demurrer filed Sept. 18, 1884.

In District Court, Dubuque County, Iowa.

J. P. FARLEY
vs.
ARTHUR O'MALLEY. } 6771. Ch'y.

TUESDAY, *September* 16, A. D. 1884.

In this cause McCeney & O'Donnell and Fouke & Lyon appear for defendant.

J. P. FARLEY
vs.
ARTHUR O'MALLEY. } 6771. Ch'y.

Removed to U. S. circuit court.

MONDAY, *September* 21, A. D. 1885.

This cause now coming on to be heard upon petition by defendant for removal to the Federal court, and the same being submitted, is by the court granted. It is therefore considered and adjudged by the court that this cause be, and the same is hereby, removed
13 to the circuit court of the United States, northern district, eastern division of Iowa.

Fee Bill.

Sep. 4, 1884.	Filing, &c., p'd by Adams, 1.50; copies. do. 3.00	4	50
	Equity fee, 1.50; sh'ff McCann on notice, 80	2	30
Sept. T., '84.	Order & cont., 407, Jan'y T., '85, con. 157		55
Ap'l T., '85.	Con., 157; sh'ff McCann on notice, 1.00	1	15
Sep. T., '85.	Fin. ent., &c., to U. S. C. C.	1	25
	Transcript "	3	50

STATE OF IOWA, } *ss:*
Dubuque County,

I, J. J. Dunn, clerk of the district court of the State of Iowa, in and for Dubuque county, do certify that the annexed and foregoing is a full, true, complete, and compared transcript of the records, pleadings, and papers therein set forth in the case wherein J. P. Farley was plaintiff and Arthur O'Malley defendant, as fully as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and caused

the seal of said court to be affixed, at Dubuque City, this 12th day of November, A. D. 1885.

[SEAL.] J. J. DUNN, *Clerk*,
By J. M. WERNER, *Deputy*.

Endorsed: J. P. Farley *vs.* Arthur O'Malley. Transcript from Dubuque county. Filed Nov'er 17, 1885. Alfred Hobbs, deputy clerk. U. S. circuit court, northern district of Iowa.

Amended Petition for Removal.

14 UNITED STATES OF AMERICA,
Northern District of Iowa, Eastern Division:

In Circuit Court U. S. November Term, A. D. 1885.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

1st. Your petitioner, the above-named defendant, shows to the court that he is now and for ten years last past he has been a citizen of the United States and of the State of Iowa, residing in the State of Iowa.

2nd. That for all of that time he has been engaged in the business of selling ale, wine, and beer, both at wholesale and retail, under and by virtue of the laws of Iowa, upon the premises mentioned in plaintiff's petition, and for the purpose of carrying on said business he, prior to July 4, 1884, had gone to great expense in fitting up and adapting the building upon said premises to the business aforesaid, at large cost to him, to wit, at a cost of at least one thousand dollars, and in said building and place he has carried on said
15 business of selling at wholesale and retail the goods and property above described, as he had and has a right to do under the laws of Iowa, which is the same keeping of a saloon charged in said plaintiff's petition, and not other or different in the place described in said petition.

3rd. That he has invested in said business and had on the 4th day of July, 1884, a large sum of money, including the amount necessarily expended in putting said building in a condition for the purposes of said business, which is involved in this case, to wit, a sum exceeding one thousand dollars, exclusive of costs, which is in addition to the personal rights of defendant, and the money invested in putting said building in said proper condition will be entirely lost to defendant, and the said building and property rendered worthless to defendant if plaintiff succeeds against him in this action.

4th. That there has been no trial or final hearing of this case.

5th. That plaintiff has filed his motion herein for a temporary injunction to restrain defendant from prosecuting his said
16 business, which motion plaintiff is endeavoring to press to a hearing, and which, if allowed, will be of irreparable injury to defendant.

6th. That the 20th General Assembly of the State of Iowa passed an enactment which defendant prays may be considered in this case, which, by its terms, went into effect on the 4th day of July, 1884,

being chapters 8 and 143, laws of the 20th General Assembly of the State of Iowa, amending sections of title XI, chapter VI of the Code of Iowa, relating to the sale of intoxicating liquors, which defendant claims should be declared of no effect, which enactments render highly penal the prosecution of said business of defendant, and which, if enforced, as threatened, in this case, will render utterly worthless the property of defendant so used and deprive him unlawfully of his occupation.

7th. That under the provisions of said law defendant can be deprived of his property and subjected to heavy penalties for being engaged in said business without having the opportunity and right of a jury trial upon the questions of fact involved, and without any trial except as pointed out by said acts.

8th. That the supreme court of the State of Iowa in the case of Littleton *vs.* Fritz, decided at the March term, A. D. 1885, of said court, to which opinion and decision reference is here prayed, has declared said law in full force, and that persons in the situation of defendants can be prosecuted under it, and be deprived of liberty and property without any right to a jury trial.

9th. That under said enactments and said decision the said plaintiff has begun and is prosecuting this suit without any right to or interest therein, except what said enactments and said decision confer.

10th. That under said laws and said decision persons who are charged with being engaged in the saloon business and guilty of maintaining a nuisance thereby are, together with their property, discriminated against in being denied the same mode of trial that persons charged with maintaining other kinds of nuisance in violation of law are allowed, and other, different, and more onerous penalties, impositions, restraints, and punishments are imposed against them and their property than are denounced against persons charged with maintaining other kinds of nuisance.

11th. That under said law, and especially section 1526, as amended, of the Code of Iowa, petitioner is denied the right to sell, either at wholesale or retail, beer or other manufactured liquors for any purpose whatsoever, on account of his occupation, while persons engaged in other employment are free to engage in such sales.

12th. That said laws and said decision are in derogation of the rights of defendant as guaranteed by the Constitution of the United States, and especially the 14th Amendment thereof, and defendant is thereby denied the equal protection of the laws of the United States, and is deprived, and liable to be deprived, of his liberty and property without due process of law.

13th. That by said laws and said decision he is denied in these proceedings, and cannot enforce in the State court, the equal protection of the laws of Iowa as guaranteed by said Constitution of the United States and said amendment, and by the laws of Congress, as passed for his protection.

14th. That said laws, so passed by said 20th General Assembly of Iowa, are null and void as being contrary to the said 14

Amendment of the Constitution of the United States and the laws made in pursuance thereof for the protection of the citizens in the State, but said supreme court of the State of Iowa has so refused to so declare, holding the same binding and in full force.

19 Defendant offers, as provided by law, to file copies of all pleadings and proceedings herein in the circuit court of the United States on the first day of its next term, and to file a bond, conditioned as provided by law, if such bond be demanded, and prays that this suit, which arises under the Constitution and laws of the United States, the present term being the one at which said suit could be first tried, and is also removable under section 641 of the Revised Statutes of the United States, may be removed into the next term of the circuit court of the United States for the northern district of Iowa, eastern division, as provided by law.

FOUKE & LYON,
McCENEY & O'DONNELL,
For Defendant.

STATE OF IOWA, }
Dubuque Co., } *ss:*

Arthur O'Malley, being duly sworn, says he is defendant in the above case; that he has heard the foregoing petition read and knows its contents, and that the matters and things therein stated are true, as he verily believes.

ARTHUR O'MALEY.

Signed & sworn to before me by Arthur O'Malley, the affiant, this 23 day of December, A. D. 1885. Witness my hand & notarial seal.

[SEAL.] H. B. FOUKE,
Notary Public.

20 (Endorsed:) J. P. Farley *vs.* Arthur O'Malley. Amended petition for removal. Filed 23 December, 1885. Alfred Hobbs, dep. clerk.

Motion to Remand.

In Circuit Court of the United States, Northern District of Iowa, Eastern Division.

J. P. FARLEY *vs.* ARTHUR O'MALLEY.

And now comes plaintiff and moves the court to remand said cause to the district court of the State of Iowa, in and for Dubuque county, for the following reasons:

1st. Because the petition for removal fails to state facts showing that defendant was entitled to remove said action from the State court under the provisions of Sec. 641 of the Revised Statutes of the United States.

2nd. Because said petition fails to state facts sufficient to give this court jurisdiction of said action.

3rd. Because said petition fails to state facts showing that defendant is denied or cannot enforce in the judicial tribunals of the

State of Iowa and rights secured to him by any law providing for the equal civil rights of citizens of the United States, or of all
21 persons within the jurisdiction of the United States, within the provisions and purview of section 641 of the Revised Statutes of the United States. And

4th. Because said action was improperly removed from said State court, as the same involves no dispute or controversy within the jurisdiction of this court.

S. P. ADAMS,
JED. LAKE,
Attorneys for Plaintiff.

Endorsed: J. P. Farley *vs.* Arthur O'Malley. Motion to remand. Filed Nove'r 17, 1885. A. Hobbs, deputy clerk.

22 J. P. FARLEY *vs.* ARTHUR O'MALLEY.

To the honorable the Supreme Court of the United States.

The appeal of Arthur O'Malley, the above-named defendant and appellant, respectfully shows—

That upon the 4th day of September, A. D. 1884, the above-named complainant filed his petition in equity in the district court of Dubuque county, Iowa, against the defendant and appellant for the purpose of enjoining him in his business, &c., and to compel him to desist in its prosecution.

That afterwards this defendant and appellant filed his petition to remove said cause into the next term of the circuit court of the United States for the northern district of Iowa, in which district said county of Dubuque was situate, which petition was allowed by said State court and said cause removed.

That afterwards, in said United States circuit court, a motion was made by said complainant to remand said cause for the reasons stated in said motion.

That afterwards defendant and appellant, by leave of court, filed his amended petition for removal.

23 That said motion to remand was afterwards submitted, and on the 1st day of February, A. D. 1886, a final decree was made and pronounced in said cause, wherein it was in substance adjudged and decreed that the United States circuit court had no jurisdiction to hear and determine said cause, and that said cause should be remanded, to which decree said defendant and appellant then and there duly excepted and prayed an appeal to this Court.

Wherefore the appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of said circuit court and the said bill of complaint or petition and amendment, pleadings, petition, and amendment, pleadings, petition, and amended petition for removal, and proceedings in said cause may be sent to the Supreme Court without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, and a decree made declaring that said circuit court of the United States has jurisdiction to hear and determine said

cause or such other decree as to the Supreme Court shall seem just.

24 FOUKE & LYON.
McCENEY & O'DONNELL.
Solicitors for the Appellant.

H. B. FOUKE,
Of Counsel.

Endorsed: J. P. Farley *vs.* A. O'Malley. Petition for appeal to Supreme Court. Filed 1st day of February, 1886. Alfred Hobbs, deputy clerk.

25 U. S. Circuit Court, Northern District of Iowa, Eastern Division. November Term, 1885. Equity.

Wednesday, 23 day of December, A. D. 1885. Thirty-first day.

J. P. FARLEY
vs.
ARTHUR O'MALLEY. } No. 122.

The above-entitled action coming on to be heard upon the motion to remand, heretofore filed, S. P. Adams, Esq., and Jed. Lake, Esq., appearing for complainants, and Fouke and Lyon and McCeney and O'Donnell for defendants, and the same having been argued by counsel, were submitted to the court.

Monday, 1st day of February, A. D. 1886. Thirty-sixth day.

J. P. FARLEY
vs.
ARTHUR O'MALLEY. } No. 122. Equity.

This cause this day coming on to be heard, upon the motion of complainant to remand the same to the State court, the complainant having, by leave of court heretofore made, filed
26 his amendment to his bill of complaint, and the defendant, by leave of court heretofore given, having filed his amended petition for removal of said cause into this court, and the court having read as well the amended pleadings of plaintiff and the amended petition for removal of defendant, and having considered the same, and having heard the said parties by their respective counsel, and being fully advised grants said motion to remand made by said plaintiff upon the ground that there is no Federal question involved in said cause. It is therefore ordered, adjudged, and decreed that said cause be remanded to the district court in and for Dubuque county, Iowa, from which it came, and that plaintiff recover his costs in this court against defendant; to all of which the defendant, by his counsel, then and there excepted.

And thereupon the defendant, in open court, file- *their* petition for appeal to the Supreme Court of the United States from said decree and presents for approval his supercedeas bond.

The court, after argument by counsel for the respective parties, being fully advised, allows said appeal to the Supreme Court and approves said supersedeas bond, which is done accordingly.

27 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Van Duzee, clerk of the United States circuit court for the northern district of Iowa, do hereby certify that the foregoing and annexed is a full, true, complete, and compared transcript of the records, pleadings, and papers therein set forth in the cause wherein J. P. Farley was plaintiff and Arthur O'Malley defendant, as fully as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Dubuque, in said district, this 12th day of February, A. D. 1886.

[Seal Circuit Court U. S., Northern District of Iowa. Dubuque.]

A. J. VAN DUZEE,
Clerk U. S. Cir. Court, Northern District of Iowa,
By ALFRED HOBBS, *Deputy.*

Fees on transcript, $7.85, paid by appellant.

[Endorsed:] Supreme Court U. S. Arthur O'Malley, appellant, *vs.* J. P. Farley, appellee. Complete transcript.

Endorsed on cover: N. Iowa C. C. U. S. No. 1288. Arthur O'Malley, appellant, *vs.* J. P. Farley. Filed March 11, 1886.

The court, after argument by counsel for the respective parties, being fully advised, allows said appeal to the Supreme Court and approves said supersedeas bond, which is done accordingly.

27 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Van Duzee, clerk of the United States circuit court for the northern district of Iowa, do hereby certify that the foregoing and annexed is a full, true, complete, and compared transcript of the records, pleadings, and papers therein set forth in the cause wherein J. P. Farley was plaintiff and Arthur O'Malley defendant, as fully as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Dubuque, in said district, this 12th day of February, A. D. 1886.

[Seal Circuit Court U. S., Northern District of Iowa. Dubuque.]

A. J. VAN DUZEE,
Clerk U. S. Cir. Court, Northern District of Iowa,
By ALFRED HOBBS, *Deputy.*

Fees on transcript, $7.85, paid by appellant.

[Endorsed:] Supreme Court U. S. Arthur O'Malley, appellant, *vs.* J. P. Farley, appellee. Complete transcript.

Endorsed on cover: N. Iowa C. C. U. S. No. 1288. Arthur O'Malley, appellant, *vs.* J. P. Farley. Filed March 11, 1886.

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JAMES H. McKENNEY
CLERK

No. 1288.

IN SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

ARTHUR O'MALLEY, *Appellant.*

vs.

J. P. FARLEY, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Iowa Eastern Division.

Motion to Advance, to Dismiss the Appeal, and to Affirm the Order of the Circuit Court remanding said cause.

S. P. ADAMS, JED LAKE and M. H. BEACH,
Solicitors for Complainant.

FOUKE & LYON and McCENEY & O'DONNELL,
Solicitors for Appellants.

No. 1288.

IN SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 885.

ARTHUR O'MALLEY, *Appellant*,

vs.

J. P. FARLEY, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Iowa Eastern Division.

S. P. ADAMS, JED LAKE and M. H. BEACH,

Solicitors for Complainant.

FOUKE & LYON and McCENEY & O'DONNELL,

Solicitors for Appellants.

Motion to Dismiss the Appeal, and to Affirm the Order of the Circuit Court remanding said cause.

MOTIONS.

Now comes the complainant and moves the court:

1st. To dismiss said appeal for the reason thtt the record fails to show that any federal question is involved, or that the Circuit Court had jurisdiction; and

2d. To affirm the order and decree of said Circuit Court, remanding said cause to the State Court for the reason that the record fails to show that any federal question is involved in said cause, and further, that it is manifest from the record that said appeal was taken for delay only, even in case it be held that this

court has jurisdiction, as will appear from the brief statement herewith submitted.

S. P. ADAMS, JED LAKE and M. H. BEACH,
Solicitors for Complainant.

BRIEF STATEMENT OF FACTS.

On the 4th day of September, 1884, complainant, a citizen of Iowa, filed in the District Court of the State of Iowa in and for Dubuque County, his complaint in equity, alleging that the defendant, who was and is a citizen of Iowa, at his place of business in the city of Dubuque, Iowa, has established a saloon for the keeping and sale of intoxicating liquors, to wit, whisky, wine, gin and beer, and is keeping said liquors in said saloon, with the intent to sell the same therein, to be drank as a beverage, contrary to the provisions of section 1542 of the Code of Iowa, as amended and substituted by the act of the 20th General Assembly of the State of Iowa, approved April 3d, 1884. And further, that in the month of August, 1884, said defendant, in his said saloon, sold to divers and sundry persons, intoxicating liquors, to be drank as a beverage, contrary to the provisions of section 1540 of the Code of Iowa, as amended by the said 20th General Assembly.

And further that said defendant at said saloon, has, since the 15th day of July, 1884, sold, and continues from day to day to sell intoxicating liquors, to wit, whisky, wine, gin and beer, to be drank as a beverage, contrary to law.

Complainant therefore prays that said saloon may be adjudged and decreed to be a nuisance, and that the same be abated, and said defendant be enjoined by preliminary injunction from further keeping or maintaining said saloon for the illegal sale of intoxicating liquors, and also from keeping said liquors with intent to sell the same therein contrary to law, and also from selling the same in said saloon, contrary to law, and that upon final hearingsaid injunction be made perpetual.

This action is brought under the provisions of section 1543 of the Code of Iowa, as amended by said 20th General Assembly, which enacts, that in cases of the violation of section 1540 or section 1542 of said Code, prohibiting the selling or keeping for sale intoxicating liquors contrary to law, the building in which such unlawful selling, or keeping with intent to sell, is carried on, is a nuisance; and further provides that any citizen of the county in which such nuisance exists, or is kept or maintained, may maintain an action in equity to abate and perpetually enjoin the same.

On the 21st day of September, 1885, defendant filed in the state court his petition for removal to the Circuit Court of the United States, upon the ground that the statutes aforesaid were in violation of the "Civil Rights" law and the Constitution of the United States, especially the 14th amendment thereof, which petition was allowed.

In the Circuit Court defendant amended his petition for removal, and averred therein:

1st, That he is, and for two years has been a citizen of Iowa.

2d, That during that time he has been engaged in selling ale, wine and beer by virtue of the laws of Iowa, and that prior to July 4th, 1884, had been to great expense in fitting up and adapting his place of business for that purpose, which is the keeping of a saloon, charged in plaintiff's petition.

3d, That he has invested in said business, and had on July 4th, 1884, a large sum of money expended in putting his said place of business in condition, to wit, more than one thousand dollars, exclusive of costs, which property will be rendered worthless to him, if plaintiff succeeds in this action.

4th, That there has been no trial or final hearing of this action.

5th, That plaintiff has filed his motion for a temporary injunction to restrain defendant from prosecuting his said business.

6th, That the 20th General Assembly of Iowa passed an act which went into effect July 4th, 1884, which renders highly penal the prosecution by defendant of his said business.

7th, That under said act defendant can be deprived of his property and subjected to heavy penalties for being engaged in said business, without the right of a jury trial.

8th, That the Supreme Court of the State of Iowa, in the case of Littleton vs. Fritz, has adjudged said act to be in full force.

9th, That this action is prosecuted under said act.

10th, That said act discriminates against saloon keepers in this, that they are denied the same mode of trial provided for other persons who are maintaining other kinds of nuisance.

11th, That under section 1526 of the Code of Iowa, defendant is denied the right to obtain a permit to sell liquors, on account of his occupation.

12th, That said laws and said decision are in derogation of the rights of said defendant under the constitution of the United States, especially the 14th amendment thereof, and is thereby denied the equal protection of the laws.

13th, That by said laws and decisions he is denied in these proceedings, and cannot enforce in the state court, the equal protection of the laws of Iowa.

14th, That said laws of Iowa are null and void, as being contrary to the said 14th amendment.

Complainant moved to remand on the ground that the record failed to state facts showing that defendant was entitled to remove the action under Sec. 641, of the revised statutes, and al-

so failed to state facts sufficient to give the court jurisdiction under the Civil Rights' Law; and further that the record disclosed no facts involving a federal question.

The court remanded the cause to state court, upon the ground that the record presented no federal question.

From that order this appeal is prosecuted.

Argument.

No difference of citizenship existing, the only question raised by this record is, whether the law of Iowa prohibiting the selling and keeping for sale intoxicating liquors contrary to law, so far as the same is sought to be enforced by this proceeding, which declares the building and place where such illegal selling or keeping for sale, are carried on, to be a nuisance, and authorizes any citizen of the county in which such nuisance exists, to maintain an action in equity without a jury trial, to enjoin and abate the same, is in violation of the Civil Rights' law, or is repugnant to any clause of the constitution of the United States.

It will be noticed that no property is proposed to be taken, or destroyed, or can be taken, or destroyed in this proceeding. No penalty is inflicted, none is proposed to be, or can be inflicted upon defendant for any act herein charged. The sole purpose and effect of this action, if successfully prosecuted, being to restrain and enjoin defendant from further maintaining the nuisance complained of.

The right of a state to absolutely prohibit the manufacture and sale of intoxicating liquors under and by virtue of its police ~~litical~~ power, has never been questioned by the Supreme Court of any state. And this court by an unbroken line of decisions for nearly forty years, both before and since the 14th Amendment, commencing with the License Cases in 1847, and coming down to Foster vs. Kansas 112 U. S., 205, has constantly maintained the same doctrine. This power so comprehensive and

absolute, from necessity, carries with it everything which is merely incidental to its existence; and we most confidently assert that the means provided for enforcing the prohibition of the statute in question, do not invade any right protected by any federal law, or by any clause of the federal constitution.

Every question properly raised by defendant in his petitions for removal, has been repeatedly decided by this court adversely to his claim. And taking it for granted that when a proposition has been decided by this court, it can no longer be said that in it, there still remains a federal question, we say that the circuit court did not err in holding that no federal question was involved in this case; and further that said appeal was manifestly taken simply for delay.

S. P. ADAMS, JED LAKE, AND M. H. BEACH,
Solicitors for Complainant.